

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 98-0315P**

**Use Tax**

**Calendar Years 1995, 1996, 1997**

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**ISSUE(S)**

I. **Tax Administration** – Penalty

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer protests the penalty assessed on an audit completed on May 4, 1998.

Taxpayer failed to self-assess and remit use tax. Taxpayer was incorporated in Indiana on March 24, 1970 and is located in Dayton, Ohio. Taxpayer is registered to collect sales tax for sales that are heavily catalogue-driven.

Taxpayer was assessed use tax on the cost of parts transferred under a maintenance agreement to Indiana customers for equipment sold to them. In accordance with Indiana Code 6-2.5-3-2 and Sales Tax Information Bulletin #2, the taxpayer has the obligation of remitting the use tax on the cost of replacements parts transferred under such maintenance agreement.

1. **Tax Administration** – Penalty

**DISCUSSION**

Taxpayer requests a waiver of penalty, as there was no deliberate attempt to avoid the additional tax due.

Taxpayer's audit revealed that no use tax accrual system was in place. Taxpayer failed to self-assess as required by statute. 45 IAC 2.2-3-20 clearly states that all purchases of tangible personal property

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which are stored, used, or consumed in the state of Indiana are subject to the tax.

The taxpayer was negligent in failing to self assess use tax due.

**FINDING**

Taxpayer's protest is denied.